

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

ZONE SPORTS CENTER INC. LLC, et al.,

Plaintiffs,

v.

RED HEAD, INC,

Defendant.

Case No. 11-cv-00634-JST

ORDER TO SHOW CAUSE

Re: Dkt. No. 102

By April 19, 2013, Plaintiffs must show cause, in writing, why this action should not be dismissed for lack of subject matter jurisdiction.

The allegations in the operative complaint are insufficient to invoke federal question jurisdiction under 28 U.S.C. § 1331. Federal courts have jurisdiction over actions “arising under the Constitution, laws, or treaties of the United States.” 28 U.S.C. § 1331. A district court has federal question jurisdiction over an action if, under the well-pleaded complaint rule, the court determines that “a right or immunity created by the Constitution or laws of the United States” is an essential element of the plaintiff’s cause of action. *Cal. Shock Trauma Air Rescue v. State Comp. Ins. Fund*, 636 F.3d 538, 541 (9th Cir. 2011). Here, the complaint contains a single cause of action, which is for rescission of an agreement on the grounds of duress under California law. *See* Second Am. Compl. (“SAC”) at 17, Dkt. No. 102 (“Rescission of the Settlement Agreement Based on Duress”). A right or immunity created by federal law does not appear to be an essential element of this claim.

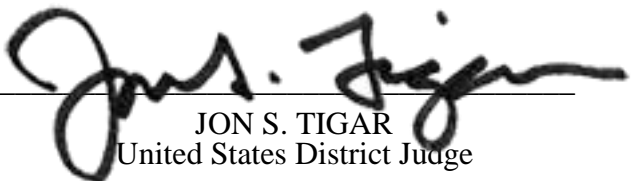
The allegations in the operative complaint also are insufficient to invoke diversity jurisdiction under 28 U.S.C. § 1332. Federal courts have jurisdiction over actions in which there is diversity of citizenship and the amount in controversy exceeds \$75,000. 28 U.S.C. § 1332(a).

1 Here, each of the parties to this action, namely Fresno Rock Taco LLC, Milton Barbis, and Red
2 Head, Inc., are citizens of California. *See* SAC ¶¶ 4-6, Dkt. No. 102; Answer ¶¶ 4-6, Dkt. No.
3 105. Accordingly, diversity of citizenship does not exist.

4 The hearing on Defendant's Motion for Summary Judgment, Dkt. No. 129, currently
5 scheduled for April 18, 2013 at 2:00 p.m., is VACATED. Defendant may re-notice the motion, if
6 appropriate, following the Court's determination of this Order to Show Cause.

7 **IT IS SO ORDERED.**

8 Dated: April 10, 2013

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11 JON S. TIGAR
12 United States District Judge
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Northern District of California